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Via ECF

August 13, 2007

Kevin N. Fox, USMJ
United States District Court, SDNY
500 Pearl Street, Rm 540
New York, NY 10007
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Re: John Nunez v. Manhattan Parking et al
Settlement Conference
Civ. Action #: 07-CV-4629

Dear Magistrate Fox:

The purpose of this communication is to address the topic of settlement in the above-referenced case. Your chambers left a message for me recently as to possible dates for a settlement conference in this matter. However, in communications today with defense counsel Davida Scher an issue came to light that would make the prospects for settlement at this time slim to none and the Court should be made aware of this so that the time of the Court and the parties is not wasted.

Plaintiff in this action seeks to recover unpaid overtime under federal and state law. The federal law has a limitations period of two to three years and New York State law has a limitations period of six years. Defendants have filed a motion to dismiss the New York overtime claims on the alleged basis that the New York claims should have been arbitrated. Further, Defendants take the position that settlement discussions should only involve the period covered by the federal law and Plaintiff holds the view that the New York claims are absolutely valid. This is obviously a gigantic difference in positions that the parties are strongly committed to. It seems therefore, that the Court would first need to decide the motion on this issue before settlement can become a feasible alternative. I also take this view in light of Your Honor's settlement rules which state in relevant part that, "I shall hold only one conference -- this is not a dress rehearsal." I believe the parties have a duty to inform the Court of this major disagreement so that the time of the Court is not wasted.

Because the pending motion to dismiss does not involve the overtime claims under federal law which cover a 2-3 year period, Plaintiff believes it would be a good idea to hold a discovery scheduling conference instead of the settlement conference. Defense counsel had proposed August 28, 2007 as a date for a settlement conference. Plaintiff is also available on this date. As such, if the Court can accommodate the parties on August 28, 2007, even by telephone, that would be best.

I thank the Court in advance for its time and consideration

Yours truly,

/s/ Abdool Hassad

Abdool Hassad, Esq. (AH6510)

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cc: Defense Counsel Davida S. Scher, Esq. via ECF